

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
COELHO FAMILY TRUST
PROVIDING FOR PROJECT WATER SERVICE
FROM DELTA DIVISION

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

1
2 UNITED STATES
3 DEPARTMENT OF THE INTERIOR
4 BUREAU OF RECLAMATION
5 Central Valley Project, California

6 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
7 AND
8 COELHO FAMILY TRUST
9 PROVIDING FOR PROJECT WATER SERVICE
10 FROM DELTA DIVISION

11 THIS CONTRACT, made this 25th day of February, 2005, in pursuance
12 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
13 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
15 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
16 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
17 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
18 hereinafter referred to as the United States, and COELHO FAMILY TRUST, hereinafter referred to
19 as the Contractor, acting pursuant to the laws of the State of California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for flood
24 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
25 restoration, generation and distribution of electric energy, salinity control, navigation and other
26 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San
27 Joaquin River and their tributaries; and

28 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
29 facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms
30 of this Contract; and

31 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant to
32 California law for operation of the Project; and

33 [4th] WHEREAS, the Mason Loundy Trust and the United States entered into Contract
34 No. 14-06-200-7859A, dated August 20, 1974, which established terms for the delivery of 5,200 acre-
35 feet of supplemental water, hereinafter referred to as Project Water, from August 20, 1974, through
36 December 31, 2003, and 2,653 acre-feet of Schedule 2 water as a permanent adjustment and
37 settlement of the Mason Loundy Trust's asserted claims of rights to water in Fresno Slough, tributary
38 to the San Joaquin River, in fulfillment of such rights to the Mason Loundy Trust from Delta Division
39 Facilities; and

40 [5th] WHEREAS, the Mason Loundy Trust entered into "Partial Assignment of Contract
41 and Consent Thereto" dated December 16, 1986, assigning 1,321 acre-feet of Schedule 2 water and
42 3,120 acre-feet of Project Water of Contract No. 14-06-200-7859A to the State of California

43 Department of Fish & Game, Wildlife Conservation Board, leaving a balance of 1,332 acre-feet of
44 Schedule 2 water and 2,080 acre-feet of Project Water available to the Mason Loundy Trust under
45 Contract No. 14-06-200-7859A; and

46 [5.1] WHEREAS, the Mason Loundy Trust entered into "Assignment of Contract, Consent
47 Thereto and Assumption Thereof" dated August 22, 1995, assigning the 1,332 acre-feet of Schedule 2
48 water and 2,080 acre-feet of Project Water remaining available under Contract
49 No. 14-06-200-7859A to the Contractor; and

50 [5.2] WHEREAS, Schedule 2 water is not the subject of this Contract and will continue to
51 be delivered and administered under the terms and conditions of Contract No. 14-06-200-7859A; and

52 [5.3] WHEREAS, Contract No. 14-06-200-7859A also established the terms for the
53 delivery of 2,080 acre-feet of supplemental water to the Contractor from Delta Division Facilities
54 from August 20, 1974, through December 31, 2003; and

55 [5.4] WHEREAS, the Contractor and the United States have pursuant to subsection
56 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim
57 renewal contract(s) identified as Contract No(s). 14-06-200-7859-A-IR1 and 14-06-200-7859-A-IR2, the
58 current of which is hereinafter referred to as the Existing Contract, which provided for the delivery of
59 Project Water to the Contractor from March 1, 2004, through February 28, 2006; and

60 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
61 Existing Contract following completion of appropriate environmental documentation, including a
62 programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy

63 Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA and
64 the potential renewal of all existing contracts for Project Water; and

65 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
66 environmental review necessary to provide for long-term renewal of the terms and conditions for
67 Project Water service under the Existing Contract; and

68 [8th] WHEREAS, the Contractor has requested a long-term renewal contract for Project
69 Water service, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
70 of the State of California; and

71 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
72 its obligations under the Existing Contract; and

73 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
74 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
75 beneficial use and/or has demonstrated projected future demand for water use such that the Contractor
76 has the capability and expects to utilize fully for reasonable and beneficial use the quantity of Project
77 Water to be made available to it pursuant to this Contract; and

78 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
79 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
80 essential portion of its water supply; and

81 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
82 depend upon the continued availability of water, including water service from the Project; and

83 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships

84 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project
85 purposes; and

86 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
87 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of
88 the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
89 reasonable balance among competing demands for use of Project Water; and to comply with all
90 applicable environmental statutes, all consistent with the legal obligations of the United States
91 relative to the Project; and

92 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
93 relationship in order to achieve their mutual goals; and

94 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
95 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
96 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

97 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
98 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
99 immediately above; and

100 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
101 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

102 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
103 contained, it is hereby mutually agreed by the parties hereto as follows:

125 (g.1) "Delta Division Facilities" shall mean those existing and future Project
126 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
127 Tracy Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the San Luis
128 Reservoir, used to divert, store and convey water to those Project Contractors entitled to receive water
129 conveyed through the Delta-Mendota Canal.

130 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be
131 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96
132 Stat. 1263), as amended, hereinafter referred to as RRA;

133 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in
134 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
135 Reclamation law;

136 (j) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting
137 Officer that shall amortize the expenditures for construction properly allocable to the Project
138 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits funded,
139 less payments, over such periods as may be required under Federal Reclamation law, or applicable
140 contract provisions. Interest will accrue on both the construction expenditures and funded O&M
141 deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case
142 of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with
143 subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual operation,
144 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for
145 the RRA;

146 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be
147 delivered in accordance with Section 204 of the RRA;

148 (l) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable to
149 the delivery of Irrigation Water;

150 (m) "Irrigation Water" shall mean Project Water that is used primarily in the
151 production of agricultural crops or livestock, including domestic use incidental thereto, and watering
152 of livestock;

153 (n) "Landholder" shall mean a party that directly or indirectly owns or leases
154 nonexempt land, as provided in 43 CFR 426.2;

155 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other than
156 Irrigation Water, made available to the Contractor. M&I Water shall include water used for human
157 use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are
158 kept for personal enjoyment or water delivered to landholdings operated in units of less than five
159 acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of
160 water delivered to any such landholding is a use described in subdivision (m) of this Article;

161 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable
162 to the delivery of M&I Water;

163 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable
164 care, control, operation, repair, replacement (other than capital replacement), and maintenance of
165 Project facilities;

166 (r) "Operating Non-Federal Entity" shall mean the entity(ies), its (their) successors
167 or assigns, which has (have) the obligation to operate and maintain all or a portion of the Delta
168 Division Facilities pursuant to a written agreement(s) with the United States. When this Contract was
169 entered into, the Operating Non-Federal Entity(ies) was (were) the San Luis & Delta-Mendota Water
170 Authority;

171 (s) "Project" shall mean the Central Valley Project owned by the United States and
172 managed by the Department of the Interior, Bureau of Reclamation;

173 (t) "Project Contractors" shall mean all parties who have water service contracts
174 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

175 (u) "Project Water" shall mean all water that is developed, diverted, stored, or
176 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
177 with the terms and conditions of water rights acquired pursuant to California law; however, Schedule
178 2 Water shall not be considered Project Water for purposes of this Contract;

179 (v) "Rates" shall mean the payments determined annually by the Contracting
180 Officer in accordance with the then current applicable water ratesetting policies for the Project, as
181 described in subdivision (a) of Article 7 of this Contract;

182 (w) "Recent Historic Average" shall mean the most recent five-year average of the
183 final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding
184 contract(s);

(w.1) "Schedule 2 Water" shall mean that water as so defined under Contract
185 No. 14-06-200-7859A with the United States, which will continue to be delivered and administered
186 under said contract;

(x) "Secretary" shall mean the Secretary of the Interior, a duly appointed successor,
187
188 or an authorized representative acting pursuant to any authority of the Secretary and through any
189 agency of the Department of the Interior;

(y) "Tiered Pricing Component" shall be the incremental amount to be paid for
190
191 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

(z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for
192
193 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

(aa) "Water Made Available" shall mean the estimated amount of Project Water that
194
195 can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,
196 pursuant to subdivision (a) of Article 4 of this Contract;

(bb) "Water Scheduled" shall mean Project Water made available to the Contractor
197
198 for which times and quantities for delivery have been established by the Contractor and Contracting
199 Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

(cc) "Year" shall mean the period from and including March 1 of each Calendar
200
201 Year through the last day of February of the following Calendar Year.

202 TERM OF CONTRACT

203 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030, and
204 supersedes Contract No. 14-06-200-7859-A-IR2. In the event the Contractor wishes to renew this

205 Contract beyond February 28, 2030, the Contractor shall submit a request for renewal in writing to
206 the Contracting Officer no later than two years prior to the date this Contract expires. The renewal of
207 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be
208 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to
209 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

210 (b) (1) Under terms and conditions of a renewal contract that are mutually
211 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of
212 contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to
213 Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the
214 Contractor, shall be renewed for a period of 25 years.

215 (2) The conditions which must be met for this Contract to be renewed are:
216 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting
217 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria
218 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an
219 effective water conservation and efficiency program based on the Contractor's water conservation
220 plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all
221 water measuring devices and implementing all water measurement methods as approved by the
222 Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and
223 beneficially used the Project Water supplies made available to it and, based on projected demands, is
224 reasonably anticipated and expects to fully utilize for reasonable and beneficial use the quantity of
225 Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying

226 with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal
227 ability to deliver Project Water.

228 (3) The terms and conditions of the renewal contract described in
229 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent
230 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and
231 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the
232 Contractor's need for continued delivery of Project Water; environmental conditions affected by
233 implementation of the Contract to be renewed, and specifically changes in those conditions that
234 occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the
235 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the
236 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

237 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
238 Contractor, shall be renewed for successive periods of up to 40 years each, which periods shall be
239 consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually
240 agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded
241 the opportunity to comment to the Contracting Officer on the proposed adoption and application of
242 any revised policy applicable to the delivery of M&I Water that would limit the term of any
243 subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40
244 years.

245 (d) The Contracting Officer shall make a determination ten years after the date of
246 execution of this Contract, and every five years thereafter during the term of this Contract, of whether

247 a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the
248 Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat
249 483). The Contracting Officer shall also make a determination ten years after the date of execution of
250 this Contract and every five years thereafter during the term of this Contract of whether a conversion
251 of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the Reclamation
252 Project Act of 1939 can be accomplished. Notwithstanding any provision of this Contract, the
253 Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483).
254 The Contracting Officer anticipates that during the term of this Contract, all authorized Project
255 construction expected to occur will have occurred, and on that basis the Contracting Officer agrees
256 upon such completion to allocate all costs that are properly assignable to the Contractor, and agrees
257 further that, at any time after such allocation is made, and subject to satisfaction of the condition set
258 out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract
259 under subsection 9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939,
260 subject to applicable Federal law and under stated terms and conditions mutually agreeable to the
261 Contractor and the Contracting Officer. A condition for such conversion to occur shall be a
262 determination by the Contracting Officer that, account being taken of the amount credited to return by
263 the Contractor as provided for under Federal Reclamation law, the remaining amount of construction
264 costs assignable for ultimate return by the Contractor can probably be repaid to the United States
265 within the term of a contract under subsection 9(d) or 9(c)(1), whichever is applicable. If the
266 remaining amount of costs that are properly assignable to the Contractor cannot be determined during
267 the term of this Contract, the Contracting Officer shall notify the Contractor, and provide the

268 reason(s) why such a determination could not be made. Further, the Contracting Officer shall make
269 such a determination as soon thereafter as possible so as to permit, upon request of the Contractor and
270 satisfaction of the condition set out above, conversion to a contract under subsection 9(d) or 9(c)(1),
271 whichever is applicable. In the event such determination of costs has not been made at a time which
272 allows conversion of this Contract during the term of this Contract or the Contractor has not
273 requested conversion of this Contract within such term, the parties shall incorporate in any
274 subsequent renewal contract as described in subdivision (b) of this Article a provision that carries
275 forth in substantially identical terms the provisions of this subdivision.

276 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

277 3. (a) During each Year, consistent with all applicable State water rights, permits,
278 and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this
279 Contract, the Contracting Officer shall make available for delivery to the Contractor 2,080 acre-feet
280 of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance
281 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
282 this Contract. Schedule 2 water shall continue to be delivered to the Contractor at no cost pursuant to
283 Contract No. 14-06-200-7859A, dated August 20, 1974, and shall not be subject to the provisions of
284 this Contract, and said Contract No. 14-06-200-7859A shall be in full force and effect insofar as it
285 pertains to the furnishing of Schedule 2 water.

286 (b) Because the capacity of the Project to deliver Project Water has been
287 constrained in recent years and may be constrained in the future due to many factors including
288 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor

289 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given
290 Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the
291 Contract Total set forth in this Contract will not be available to the Contractor in many years. During
292 the most recent five years, the Recent Historic Average of Water Made Available to the Contractor
293 was 1,369 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations
294 of the parties under any provision of this Contract.

295 (c) The Contractor shall utilize the Project Water in accordance with all applicable
296 legal requirements.

297 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor) that
298 receives Project Water through the Delta Division Facilities obtains a contractual agreement that the
299 Contracting Officer shall make Project Water available at a point or points of delivery in or north of
300 the Delta, at the request of the Contractor and upon completion of any required environmental
301 documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on
302 mutually agreeable terms. Such amendments to the Contract shall be limited solely to those changes
303 made necessary by the addition of such alternate points of delivery in or north of the Delta; Provided,
304 That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver Project Water
305 does not trigger this right of amendment.

306 (d) The Contractor shall make reasonable and beneficial use of all water furnished
307 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater
308 banking programs, surface water storage programs, and other similar programs utilizing Project Water
309 or other water furnished pursuant to this Contract conducted within the Contractor's Service Area

310 which are consistent with applicable State law and result in use consistent with Federal Reclamation
311 law will be allowed; Provided, That any direct recharge program(s) is (are) described in the
312 Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,
313 further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's
314 Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
315 reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge
316 programs, groundwater banking programs, surface water storage programs, and other similar programs
317 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the
318 Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which
319 approval will be based upon environmental documentation, Project Water rights, and Project
320 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or
321 guidelines.

322 (e) The Contractor shall comply with requirements applicable to the Contractor in
323 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
324 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
325 within the Contractor's legal authority to implement. The Contract No(s). 14-06-200-7859A, 14-06-
326 200-7859-A-IR1, and 14-06-200-7859-A-IR2, which evidence in excess of 30 years of diversions for
327 irrigation and/or M&I purposes of the quantities of water provided in subdivision (a) of Article 3 of
328 this Contract, will be considered in developing an appropriate baseline for biological assessment(s)
329 prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be
330 construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent

331 jurisdiction with respect to any biological opinion or other environmental documentation referred to in
332 this Article.

333 (f) Following the declaration of Water Made Available under Article 4 of this
334 Contract, the Contracting Officer will make a determination whether Project Water, or other water
335 available to the Project, can be made available to the Contractor in addition to the Contract Total under
336 this Article during the Year without adversely impacting other Project Contractors. At the request of
337 the Contractor, the Contracting Officer will consult with the Contractor prior to making such a
338 determination. If the Contracting Officer determines that Project Water, or other water available to the
339 Project, can be made available to the Contractor, the Contracting Officer will announce the availability
340 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will
341 thereafter meet with the Contractor and other Project Contractors capable of taking such water to
342 determine the most equitable and efficient allocation of such water. If the Contractor requests the
343 delivery of any quantity of such water, the Contracting Officer shall make such water available to the
344 Contractor in accordance with applicable statutes, regulations, guidelines, and policies. Subject to
345 existing long-term contractual commitments, water rights and operational constraints, long-term
346 Project Contractors shall have a first right to acquire such water, including Project Water made
347 available pursuant to Section 215 of the RRA.

348 (g) The Contractor may request permission to reschedule for use during the
349 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,
350 referred to as "rescheduled water." The Contractor may request permission to use during the current
351 Year a quantity of Project Water which may be made available by the United States to the Contractor

352 during the subsequent Year referred to as "preuse." The Contracting Officer's written approval may
353 permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

354 (h) The Contractor's right pursuant to Federal Reclamation law and applicable
355 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the
356 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during
357 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations
358 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the
359 Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of
360 this Contract or applicable provisions of any subsequent renewal contracts.

361 (i) Project Water furnished to the Contractor pursuant to this Contract may be
362 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this
363 Contract upon written approval by the Contracting Officer in accordance with the terms and
364 conditions of such approval.

365 (j) The Contracting Officer shall make reasonable efforts to protect the water
366 rights necessary for the Project and to provide the water available under this Contract. The
367 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
368 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
369 That the Contracting Officer retains the right to object to the substance of the Contractor's position in
370 such a proceeding; Provided further, That in such proceedings the Contracting Officer shall recognize
371 the Contractor has a legal right under the terms of this Contract to use Project Water.

372

TIME FOR DELIVERY OF WATER

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4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall

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announce the Contracting Officer's expected declaration of the Water Made Available. Such

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declaration will be expressed in terms of both Water Made Available and the Recent Historic

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Average and will be updated monthly, and more frequently if necessary, based on then-current

377

operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made

378

Available will be made. The Contracting Officer shall provide forecasts of Project operations and the

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basis of the estimate, with relevant supporting information, upon the written request of the

380

Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer

381

shall provide the Contractor with the updated Recent Historic Average.

382

(b) On or before each March 1 and at such other times as necessary, the Contractor

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shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,

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showing the monthly quantities of Project Water to be delivered by the United States to the

385

Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting

386

Officer shall use all reasonable means to deliver Project Water according to the approved schedule for

387

the Year commencing on such March 1.

388

(c) The Contractor shall not schedule Project Water in excess of the quantity of

389

Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's

390

Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

391

(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this

392

Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial

393 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
394 revision(s) thereto, satisfactory to the Contracting Officer, submitted within a reasonable time prior to
395 the date(s) on which the requested change(s) is/are to be implemented.

396 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

397 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
398 Contract shall be delivered to the Contractor from the Mendota Pool and any additional point or
399 points of delivery either on Project facilities or another location or locations mutually agreed to in
400 writing by the Contracting Officer and the Contractor.

401 (b) The Contracting Officer, either directly or indirectly through its written
402 agreement(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to
403 maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the
404 Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

405 (c) The Contractor shall deliver Irrigation Water in accordance with any applicable
406 land classification provisions of Federal Reclamation law and the associated regulations. The
407 Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless
408 approved in advance by the Contracting Officer.

409 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
410 measured and recorded with equipment furnished, installed, operated, and maintained by the
411 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
412 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
413 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon

414 the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be
415 investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such
416 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
417 period of time when accurate measurements have not been made, the Contracting Officer shall
418 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to
419 making a final determination of the quantity delivered for that period of time.

420 (e) Absent a separate contrary written agreement with the Contractor, neither the
421 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
422 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
423 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.
424 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
425 account of damage or claim of damage of any nature whatsoever for which there is legal
426 responsibility, including property damage, personal injury, or death arising out of or connected with
427 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
428 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the
429 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating
430 Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage or claim; (ii)
431 willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,
432 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of
433 its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); or (iv) a

434 malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal
435 Entity(ies).

436 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

437 6. (a) The Contractor has established a measuring program satisfactory to the
438 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
439 purposes within the Contractor's Service Area is measured at each agricultural turnout and such water
440 delivered for M&I purposes is measured at each M&I service connection. The water measuring
441 devices or water measuring methods of comparable effectiveness must be acceptable to the
442 Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining
443 and repairing all such measuring devices and implementing all such water measuring methods at no
444 cost to the United States. The Contractor shall use the information obtained from such water
445 measuring devices or water measuring methods to ensure its proper management of the water, to bill
446 water users for water delivered by the Contractor; and, if applicable, to record water delivered for
447 M&I purposes by customer class as defined in the Contractor's water conservation plan provided for
448 in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from
449 establishing and collecting any charges, assessments, or other revenues authorized by California law.
450 The Contractor shall include a summary of all its annual surface water deliveries in the annual report
451 described in subdivision (c) of Article 26.

452 (b) To the extent the information has not otherwise been provided, upon execution
453 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the
454 measurement devices or water measuring methods being used or to be used to implement subdivision

455 (a) of this Article and identifying the agricultural turnouts and the M&I service connections or
456 alternative measurement programs approved by the Contracting Officer, at which such measurement
457 devices or water measuring methods are being used, and, if applicable, identifying the locations at
458 which such devices and/or methods are not yet being used including a time schedule for
459 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
460 within 60 days as to the adequacy, and necessary modifications, if any, of the measuring devices or
461 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
462 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
463 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
464 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
465 which the Contractor shall modify said measuring devices and/or measuring methods as required by
466 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

467 (c) All new surface water delivery systems installed within the Contractor's
468 Service Area after the effective date of this Contract shall also comply with the measurement
469 provisions described in subdivision (a) of this Article.

470 (d) The Contractor shall inform the Contracting Officer and the State of California
471 in writing by April 30 of each Year of the monthly volume of surface water delivered within the
472 Contractor's Service Area during the previous Year.

473 (e) The Contractor shall inform the Contracting Officer and the Operating
474 Non-Federal Entity on or before the 20th calendar day of each month of the quantity of Irrigation
475 Water and M&I Water taken during the preceding month.

RATES AND METHOD OF PAYMENT FOR WATER

476
477 7. (a) The Contractor shall pay the United States as provided in this Article for all
478 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
479 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
480 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,
481 modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal
482 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
483 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or
484 any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.
485 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of
486 this Contract are set forth in Exhibit "B," as may be revised annually.

487 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and
488 Tiered Pricing Component as follows:

489 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
490 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
491 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
492 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
493 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
494 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
495 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
496 such notification shall revise Exhibit "B."

497 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
498 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project
499 Water for the following Year and the computations and cost allocations upon which those Rates are
500 based. The Contractor shall be allowed not less than two months to review and comment on such
501 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
502 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the
503 upcoming Year, and such notification shall revise Exhibit "B."

504 (c) At the time the Contractor submits the initial schedule for the delivery of
505 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
506 shall make an advance payment to the United States equal to the total amount payable pursuant to the
507 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
508 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
509 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
510 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
511 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
512 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
513 for Water Delivered shall be made before the end of the following month; Provided, That any revised
514 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
515 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
516 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
517 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered

518 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the
519 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an
520 advance payment at the Rates then in effect for such additional Project Water is made. Final
521 adjustment between the advance payments for the Water Scheduled and payments for the quantities
522 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
523 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water
524 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
525 last day of February.

526 (d) The Contractor shall also make a payment in addition to the Rate(s) in
527 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
528 appropriate Tiered Pricing Component then in effect, before the end of the month following the
529 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
530 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
531 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
532 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
533 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed
534 a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
535 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
536 payments due to the United States for Charges for the next month. Any amount to be paid for past
537 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
538 of this Contract.

539 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or
540 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
541 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;
542 Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this Contract shall
543 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision
544 (a) of this Article.

545 (f) Payments to be made by the Contractor to the United States under this Contract
546 may be paid from any revenues available to the Contractor.

547 (g) All revenues received by the United States from the Contractor relating to the
548 delivery of Project Water or the delivery of non-Project water through Project facilities shall be
549 allocated and applied in accordance with Federal Reclamation law and the associated rules or
550 regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

551 (h) The Contracting Officer shall keep its accounts pertaining to the administration
552 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal
553 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
554 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
555 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,
556 and a summary of all water delivery information. The Contracting Officer and the Contractor shall
557 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,
558 reports, or information.

559 (i) The parties acknowledge and agree that the efficient administration of this
560 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
561 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component, and/or
562 for making and allocating payments, other than those set forth in this Article may be in the mutual
563 best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify
564 the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect
565 without amending this Contract.

566 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
567 80 percent of the Contract Total, then before the end of the month following the month of delivery the
568 Contractor shall make an additional payment to the United States equal to the applicable Tiered
569 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
570 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
571 one-half of the difference between the Rate established under subdivision (a) of this Article and the
572 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered
573 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract
574 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article
575 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.
576 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
577 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation
578 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total
579 Water Delivered.

580 (2) Subject to the Contracting Officer's written approval, the Contractor
581 may request and receive an exemption from such Tiered Pricing Component for Project Water
582 delivered to produce a crop which the Contracting Officer determines will provide significant and
583 quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;
584 Provided, That the exemption from the Tiered Pricing Component for Irrigation Water shall apply
585 only if such habitat values can be assured consistent with the purposes of the CVPIA through binding
586 agreements executed with or approved by the Contracting Officer prior to use of such water.

587 (3) For purposes of determining the applicability of the Tiered Pricing
588 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor
589 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it
590 include the additional water provided to the Contractor under the provisions of subdivision (f) of
591 Article 3 of this Contract.

592 (k) For the term of this Contract, Rates applied under the respective ratesetting
593 policies will be established to recover only reimbursable O&M (including any deficits) and capital
594 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and
595 interest, where appropriate, except in instances where a minimum Rate is applicable in accordance
596 with the relevant Project ratesetting policy. Changes of significance in practices which implement the
597 Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer has
598 provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed
599 change.

600 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
601 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
602 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the
603 changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project
604 Water to the transferee's point of delivery in accordance with the then applicable Project ratesetting
605 policy. If the Contractor is receiving lower Rates and Charges because of inability to pay and is
606 transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability
607 to pay, the Rates and Charges for transferred Project Water shall not be adjusted to reflect the
608 Contractor's inability to pay.

609 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
610 Officer is authorized to adjust determinations of ability to pay every five years.

611 (n) Omitted.

612 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

613 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
614 Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further liability
615 therefor.

616 SALES, TRANSFERS, OR EXCHANGES OF WATER

617 9. (a) The right to receive Project Water provided for in this Contract may be sold,
618 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
619 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
620 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this

621 Contract may take place without the prior written approval of the Contracting Officer, except as
622 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
623 approved absent all appropriate environmental documentation, including but not limited to,
624 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should
625 include, as appropriate, an analysis of groundwater impacts and economic and social effects,
626 including environmental justice, of the proposed water transfers on both the transferor and transferee.

627 (b) In order to facilitate efficient water management by means of water transfers of
628 the type historically carried out among Project Contractors located within the same geographical area
629 and to allow the Contractor to participate in an accelerated water transfer program during the term of
630 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
631 documentation, including but not limited to documents prepared pursuant to NEPA and ESA,
632 analyzing annual transfers within such geographical areas and the Contracting Officer shall determine
633 whether such transfers comply with applicable law. Following the completion of the environmental
634 documentation, such transfers addressed in such documentation shall be conducted with advance
635 notice to the Contracting Officer, but shall not require prior written approval by the Contracting
636 Officer. Such environmental documentation and the Contracting Officer's compliance determination
637 shall be reviewed every five years and updated, as necessary, prior to the expiration of the then
638 existing five-year period. All subsequent environmental documentation shall include an alternative to
639 evaluate not less than the quantity of Project Water historically transferred within the same
640 geographical area.

641 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
642 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for
643 M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface
644 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to
645 established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single
646 Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing
647 facilities with no new construction or modifications to facilities and be between existing Project
648 Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply
649 with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of
650 the environment and Indian Trust Assets, as defined under Federal law.

651 APPLICATION OF PAYMENTS AND ADJUSTMENTS

652 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
653 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
654 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000
655 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at
656 the option of the Contractor, may be credited against amounts to become due to the United States by
657 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
658 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the
659 Project Water supply provided for herein. All credits and refunds of overpayments shall be made
660 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such

661 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year
662 in which the overpayment was made.

663 (b) All advances for miscellaneous costs incurred for work requested by the
664 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the
665 work has been completed. If the advances exceed the actual costs incurred, the difference will be
666 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will
667 be billed for the additional costs pursuant to Article 25.

668 TEMPORARY REDUCTIONS--RETURN FLOWS

669 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
670 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or
671 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make
672 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this
673 Contract.

674 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily
675 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
676 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
677 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
678 feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due
679 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in
680 which case no notice need be given; Provided, That the United States shall use its best efforts to avoid
681 any discontinuance or reduction in such service. Upon resumption of service after such reduction or

682 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the
683 quantity of Project Water which would have been delivered hereunder in the absence of such
684 discontinuance or reduction.

685 (c) The United States reserves the right to all seepage and return flow water
686 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the
687 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States
688 any right to seepage or return flow being put to reasonable and beneficial use pursuant to this
689 Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or
690 under the Contractor.

691 CONSTRAINTS ON THE AVAILABILITY OF WATER

692 12. (a) In its operation of the Project, the Contracting Officer will use all
693 reasonable means to guard against a Condition of Shortage in the quantity of water to be made
694 available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines
695 that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of
696 said determination as soon as practicable.

697 (b) If there is a Condition of Shortage because of errors in physical operations of
698 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
699 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)
700 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
701 agents, or employees for any damage, direct or indirect, arising therefrom.

702 (c) In any Year in which there may occur a Condition of Shortage for any of the
703 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
704 Contracting Officer will first allocate the available Project Water consistent with the draft CVP M&I
705 Water Shortage Policy on the effective date of this Contract as finally adopted after environmental
706 review for determining the amount of Project Water available for delivery to the Project Contractors.
707 Subject to the foregoing allocation, in any year in which there may occur a Condition of Shortage, the
708 Contracting Officer shall then apportion Project Water among the Contractor and others entitled to
709 Project Water from Delta Division Facilities under long-term water service or repayment contracts (or
710 renewals thereof or binding commitments therefor) in force on February 28, 2005, as follows:

711 (1) The Contracting Officer shall make an initial and subsequent
712 determination as necessary of the total quantity of Project Water estimated to be scheduled or actually
713 scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term water
714 service or repayment contracts then in force for the delivery of Project Water by the United States
715 from Delta Division Facilities during the relevant Year, the quantity so determined being hereinafter
716 referred to as the scheduled total;

717 (2) A determination shall be made of the total quantity of Project Water
718 that is available for meeting the scheduled total, the quantity so determined being hereinafter referred
719 to as the available supply;

720 (3) The total quantity of Project Water estimated to be scheduled or
721 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4

722 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred to
723 as the Contractor's proportionate share; and

724 (4) The available supply shall be multiplied by the Contractor's
725 proportionate share and the result shall be the quantity of Project Water made available by the United
726 States to the Contractor for the relevant Year in accordance with the schedule developed by the
727 Contracting Officer under subdivision (c)(1) of this Article, but in no event shall such amount exceed
728 the Contract Total. In the event the Contracting Officer subsequently determines that the Contracting
729 Officer can increase or needs to decrease the available supply for delivery from Delta Division
730 Facilities to long-term water service and repayment Contractors during the relevant Year, such
731 additions or reductions to the available supply shall be apportioned consistent with subparagraphs (1)
732 through (4), inclusive.

733 (d) By entering into this Contract, the Contractor does not waive any legal rights or
734 remedies it may have to file or participate in any administrative or judicial proceeding contesting (i)
735 the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of such a
736 policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is implemented
737 in order to allocate Project Water between municipal and industrial and irrigation purposes; Provided,
738 That the Contractor has commenced any such judicial challenge or any administrative procedures
739 necessary to institute any judicial challenge within six months of the policy becoming final. By
740 agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies that
741 it may have to assert in such a proceeding. Nothing contained herein shall be interpreted to validate
742 or invalidate the Central Valley Project M&I Water Shortage Policy.

743

UNAVOIDABLE GROUNDWATER PERCOLATION

744 13. To the extent applicable, the Contractor shall not be deemed to have delivered
745 Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands
746 are irrigated with groundwater that reaches the underground strata as an unavoidable result of the
747 delivery of Irrigation Water by the Contractor to Eligible Lands.

748

RULES AND REGULATIONS

749 14. The parties agree that the delivery of Irrigation Water or use of Federal facilities
750 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to the
751 Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the
752 rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

753

WATER AND AIR POLLUTION CONTROL

754 15. The Contractor, in carrying out this Contract, shall comply with all applicable water
755 and air pollution laws and regulations of the United States and the State of California, and shall
756 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

757

QUALITY OF WATER

758 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
759 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
760 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
761 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
762 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
763 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
764 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
765 Contractor pursuant to this Contract. None of the foregoing affects or modifies the obligations of the

766 United States under Contract No. 14-06-200-7859A, dated August 20, 1974, with respect to Schedule
767 2 water, including but not limited to, Article 18 of said contract.

768 (b) The O&M of Project facilities shall be performed in such manner as is
769 practicable to maintain the quality of raw water made available through such facilities at the highest
770 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
771 responsible for compliance with all State and Federal water quality standards applicable to surface
772 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
773 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

774 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN
775 FROM THE UNITED STATES

776 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
777 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
778 be simultaneously transported through the same distribution facilities of the Contractor subject to the
779 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
780 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
781 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
782 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
783 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
784 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
785 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity

786 necessary to irrigate such Eligible Lands. The Contractor and the Contracting Officer concur that, as
787 of the effective date of this Contract, the Contractor has a distribution system that was constructed
788 without the use of Federally financed funds.

789 (b) Water or water rights now owned or hereafter acquired by the Contractor, other
790 than from the United States may be stored, conveyed and/or diverted through Project facilities,
791 subject to the completion of appropriate environmental documentation, with the approval of the
792 Contracting Officer and the execution of any contract determined by the Contracting Officer to be
793 necessary, consistent with the following provisions:

794 (1) The Contractor may introduce non-Project water into Project facilities
795 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,
796 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
797 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project
798 use power policy, if such Project use power policy is applicable, each as amended, modified or
799 superseded from time to time.

800 (2) Delivery of such non-Project water in and through Project facilities
801 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
802 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
803 Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other
804 Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

805 (3) Neither the United States nor the Operating Non-Federal Entity(ies)
806 shall be responsible for control, care or distribution of the non-Project water before it is introduced

807 into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to
808 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their
809 respective officers, agents, and employees, from any claim for damage to persons or property, direct
810 or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in
811 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
812 into Project facilities.

813 (4) Diversion of such non-Project water into Project facilities shall be
814 consistent with all applicable laws, and if involving groundwater, consistent with any applicable
815 groundwater management plan for the area from which it was extracted.

816 (5) After Project purposes are met, as determined by the Contracting
817 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
818 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available
819 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such
820 remaining capacity being made available to non-Project contractors. Other Project Contractors shall
821 have a second priority to any remaining capacity of facilities declared to be available by the
822 Contracting Officer for conveyance and transportation of non-Project water prior to any such
823 remaining capacity being made available to non-Project contractors.

824 OPINIONS AND DETERMINATIONS

825 18. (a) Where the terms of this Contract provide for actions to be based upon the
826 opinion or determination of either party to this Contract, said terms shall not be construed as

827 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
828 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve
829 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
830 unreasonable opinion or determination. Each opinion or determination by either party shall be
831 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
832 affect or alter the standard of judicial review applicable under Federal law to any opinion or
833 determination implementing a specific provision of Federal law embodied in statute or regulation.

834 (b) The Contracting Officer shall have the right to make determinations necessary
835 to administer this Contract that are consistent with the provisions of this Contract, the laws of the
836 United States and of the State of California, and the rules and regulations promulgated by the
837 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to
838 the extent reasonably practicable.

839 COORDINATION AND COOPERATION

840 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
841 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other
842 affected Project Contractors, in order to improve the operation and management of the Project. The
843 communication, coordination, and cooperation regarding operations and management shall include,
844 but not be limited to, any action which will or may materially affect the quantity or quality of Project
845 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
846 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder

847 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
848 authority for all actions, opinions, and determinations to be made by the respective party.

849 (b) Within 120 days following the effective date of this Contract, the Contractor,
850 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
851 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
852 amended as necessary separate and apart from this Contract. The goal of this process shall be to
853 provide, to the extent practicable, the means of mutual communication and interaction regarding
854 significant decisions concerning Project operation and management on a real-time basis.

855 (c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract,
856 it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

857 (1) The Contracting Officer will, at the request of the Contractor, assist in
858 the development of integrated resource management plans for the Contractor. Further, the
859 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
860 improve water supply, water quality, and reliability.

861 (2) The Secretary will, as appropriate, pursue program and project
862 implementation and authorization in coordination with Project Contractors to improve the water
863 supply, water quality, and reliability of the Project for all Project purposes.

864 (3) The Secretary will coordinate with Project Contractors and the State of
865 California to seek improved water resource management.

866 (4) The Secretary will coordinate actions of agencies within the
867 Department of the Interior that may impact the availability of water for Project purposes.

868 (5) The Contracting Officer shall periodically, but not less than annually,
869 hold division level meetings to discuss Project operations, division level water management activities,
870 and other issues as appropriate.

871 (d) Without limiting the contractual obligations of the Contracting Officer under
872 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
873 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
874 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety or
875 the physical integrity of structures or facilities.

876 CHARGES FOR DELINQUENT PAYMENTS

877 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
878 on delinquent installments or payments. When a payment is not received by the due date, the
879 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
880 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
881 charge to cover additional costs of billing and processing the delinquent payment. When a payment is
882 delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%)
883 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor
884 shall pay any fees incurred for debt collection services associated with a delinquent payment.

885 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in
886 the Federal Register by the Department of the Treasury for application to overdue payments, or the
887 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation
888 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due
889 date and remain fixed for the duration of the delinquent period.

890 (c) When a partial payment on a delinquent account is received, the amount
891 received shall be applied, first to the penalty, second to the administrative charges, third to the
892 accrued interest, and finally to the overdue payment.

EQUAL OPPORTUNITY

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21. During the performance of this Contract, the Contractor agrees as follows:

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(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

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(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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(e) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said

926 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided
927 by law.

928 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
929 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
930 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
931 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
932 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
933 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,
934 That in the event the Contractor becomes involved in, or is threatened with, litigation with a
935 subcontractor or vendor as a result of such direction, the Contractor may request the United States to
936 enter into such litigation to protect the interests of the United States.

937 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

938 22. (a) The obligation of the Contractor to pay the United States as provided in this
939 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation
940 may be distributed among the Contractor's water users and notwithstanding the default of individual
941 water users in their obligations to the Contractor.

942 (b) The payment of charges becoming due hereunder is a condition precedent to
943 receiving benefits under this Contract. The United States shall not make water available to the
944 Contractor through Project facilities during any period in which the Contractor may be in arrears in
945 the advance payment of water rates due the United States. The Contractor shall not furnish water
946 made available pursuant to this Contract for lands or parties which are in arrears in the advance
947 payment of water rates levied or established by the Contractor.

948 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
949 obligation to require advance payment for water rates which it levies.

950 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

951 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
952 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
953 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
954 well as with their respective implementing regulations and guidelines imposed by the U.S.
955 Department of the Interior and/or Bureau of Reclamation.

956 (b) These statutes require that no person in the United States shall, on the grounds
957 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the

958 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
959 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
960 agrees to immediately take any measures necessary to implement this obligation, including permitting
961 officials of the United States to inspect premises, programs, and documents.

962 (c) The Contractor makes this agreement in consideration of and for the purpose of
963 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
964 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
965 installment payments after such date on account of arrangements for Federal financial assistance
966 which were approved before such date. The Contractor recognizes and agrees that such Federal
967 assistance will be extended in reliance on the representations and agreements made in this Article,
968 and that the United States reserves the right to seek judicial enforcement thereof.

969 PRIVACY ACT COMPLIANCE

970 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
971 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
972 maintaining Landholder acreage certification and reporting records, required to be submitted to the
973 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96
974 Stat. 1266), and pursuant to 43 CFR 426.18.

975 (b) With respect to the application and administration of the criminal penalty
976 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
977 for maintaining the certification and reporting records referenced in (a) above are considered to be
978 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

979 (c) The Contracting Officer or a designated representative shall provide the
980 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
981 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
982 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
983 contained in the Landholder's certification and reporting records.

984 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
985 Reclamation to be the System Manager who shall be responsible for making decisions on denials
986 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
987 authorized to grant requests by individuals for access to their own records.

988 (e) The Contractor shall forward promptly to the System Manager each proposed
989 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
990 2.71; notify the requester accordingly of such referral; and provide the System Manager with
991 information and records necessary to prepare an appropriate response to the requester. These

992 requirements do not apply to individuals seeking access to their own certification and reporting forms
993 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
994 Act as a basis for the request.

995 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

996 25. In addition to all other payments to be made by the Contractor pursuant to this
997 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
998 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
999 direct cost incurred by the United States for work requested by the Contractor associated with this
1000 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1001 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1002 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1003 administration.

1004 WATER CONSERVATION

1005 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1006 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1007 implementing an effective water conservation and efficiency program based on the Contractor's water
1008 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1009 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1010 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1011 economically feasible water conservation measures, and time schedules for meeting those objectives.
1012 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1013 continued implementation of such water conservation program. In the event the Contractor's water

1014 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1015 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1016 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1017 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1018 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1019 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1020 program in accordance with the time schedules therein.

1021 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1022 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement the
1023 Best Management Practices identified by the time frames issued by the California Urban Water
1024 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1025 Officer to be inappropriate for the Contractor.

1026 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1027 its implementation of the water conservation plan on the reporting dates specified in the then-existing
1028 conservation and efficiency criteria established under Federal law.

1029 (d) At five-year intervals, the Contractor shall revise its water conservation plan to
1030 reflect the then-current conservation and efficiency criteria for evaluating water conservation plans
1031 established under Federal law and submit such revised water management plan to the Contracting
1032 Officer for review and evaluation. The Contracting Officer will then determine if the water
1033 conservation plan meets Reclamation's then-current conservation and efficiency criteria for
1034 evaluating water conservation plans established under Federal law.

1035 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1036 be described in the Contractor's water conservation plan.

1037 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1038 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1039 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1040 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1041 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1042 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1043 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1044 Reclamation law.

1045 OPERATION AND MAINTENANCE BY
1046 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

1047 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1048 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
1049 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-20-
1050 X0354) between the United States and the Operating Non-Federal Entity San Luis & Delta-Mendota
1051 Water Authority. That separate agreement shall not interfere with or affect the rights or obligations of
1052 the Contractor or the United States hereunder.

1053 (b) The Contracting Officer has previously notified the Contractor in writing that
1054 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1055 been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,
1056 and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-
1057 Mendota Water Authority, or to any successor approved by the Contracting Officer under the terms
1058 and conditions of the separate agreement between the United States and the Operating Non-Federal

1059 Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all
1060 rates, charges, or assessments of any kind, including any assessment for reserve funds, which the
1061 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor
1062 determines, sets, or establishes for the O&M of the portion of the Project facilities operated and
1063 maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such
1064 successor. Such direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota
1065 Water Authority or such successor shall not relieve the Contractor of its obligation to pay directly to
1066 the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component
1067 except to the extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1068 collects payments on behalf of the United States in accordance with the separate agreement identified
1069 in subdivision (a) of this Article.

1070 (c) For so long as the O&M of any portion of the Project facilities serving the
1071 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1072 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1073 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1074 performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or its
1075 successor.

1076 (d) In the event the O&M of the Project facilities operated and maintained by the
1077 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1078 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1079 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the

1080 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1081 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1082 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1083 Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United
1084 States in compliance with Article 7 of this Contract.

1085 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1086 29. The expenditure or advance of any money or the performance of any obligation of the
1087 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1088 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1089 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1090 or allotted.

1091 BOOKS, RECORDS, AND REPORTS

1092 30. (a) The Contractor shall establish and maintain accounts and other books and
1093 records pertaining to administration of the terms and conditions of this Contract, including: the
1094 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1095 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1096 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1097 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1098 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1099 during office hours to examine and make copies of the other party's books and records relating to
1100 matters covered by this Contract.

1101 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1102 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1103 such books, records, or information are reasonably related to the administration or performance of
1104 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1105 to provide the requested books, records, or information.

1106 (c) At such time as the Contractor provides information to the Contracting Officer
1107 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1108 Operating Non-Federal Entity.

1109 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1110 31. (a) The provisions of this Contract shall apply to and bind the successors and
1111 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1112 therein shall be valid until approved in writing by the Contracting Officer.

1113 (b) The assignment of any right or interest in this Contract by either party shall not
1114 interfere with the rights or obligations of the other party to this Contract absent the written
1115 concurrence of said other party.

1116 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1117 of any proposed assignment.

1118 SEVERABILITY

1119 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1120 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1121 association or other form of organization whose primary function is to represent parties to Project
1122 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1123 enforceability of a provision included in this Contract and said person, entity, association, or
1124 organization obtains a final court decision holding that such provision is legally invalid or
1125 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1126 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1127 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)

1128 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1129 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1130 actions designated above, to the extent it can do so without violating any applicable provisions of
1131 law, the United States shall continue to make the quantities of Project Water specified in this Contract
1132 available to the Contractor pursuant to the provisions of this Contract which were not found to be
1133 legally invalid or unenforceable in the final court decision.

1134 RESOLUTION OF DISPUTES

1135 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1136 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1137 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1138 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1139 notice of the intent to take such action; Provided, That such notice shall not be required where a delay
1140 in commencing an action would prejudice the interests of the party that intends to file suit. During
1141 the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an
1142 attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or
1143 abridge any right or remedy that the Contractor or the United States may have.

1144 OFFICIALS NOT TO BENEFIT

1145 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1146 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1147 manner as other water users or landowners.

1148 CHANGES IN CONTRACTOR'S SERVICE AREA

1149 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1150 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1151 except upon the Contracting Officer's written consent.

1152 (b) Within 30 days of receipt of a request for such a change, the Contracting
1153 Officer will notify the Contractor of any additional information required by the Contracting Officer
1154 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1155 timely completion of the process. Such process will analyze whether the proposed change is likely to:
1156 (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the
1157 Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1158 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1159 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1160 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1161 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1162 FEDERAL LAWS

1163 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1164 validity or application in connection with the performance of the terms and conditions of this
1165 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1166 terms and conditions of this Contract unless and until relief from application of such Federal law or
1167 regulation to the implementing provision of the Contract is granted by a court of competent
1168 jurisdiction.

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NOTICES

1170 37. Any notice, demand, or request authorized or required by this Contract shall be
1171 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1172 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,
1173 and on behalf of the United States, when mailed, postage prepaid, or delivered to Mr. Jerry Coelho,
1174 Coelho Family Trust, 5494 West Mount Whitney Avenue, Riverdale, California 93656. The
1175 designation of the addressee or the address may be changed by notice given in the same manner as
1176 provided in this Article for other notices.

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CONFIRMATION OF CONTRACT

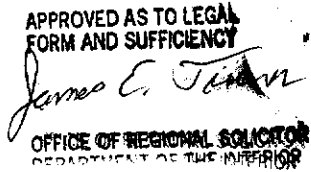
1178 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1179 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1180 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1181 validation proceedings, and all pertinent supporting records of the court approving and confirming
1182 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

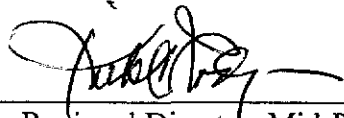
IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and

1183 year first above written.

1184 THE UNITED STATES OF AMERICA

1185
1186
1187



By: 
Regional Director, Mid-Pacific Region
Bureau of Reclamation

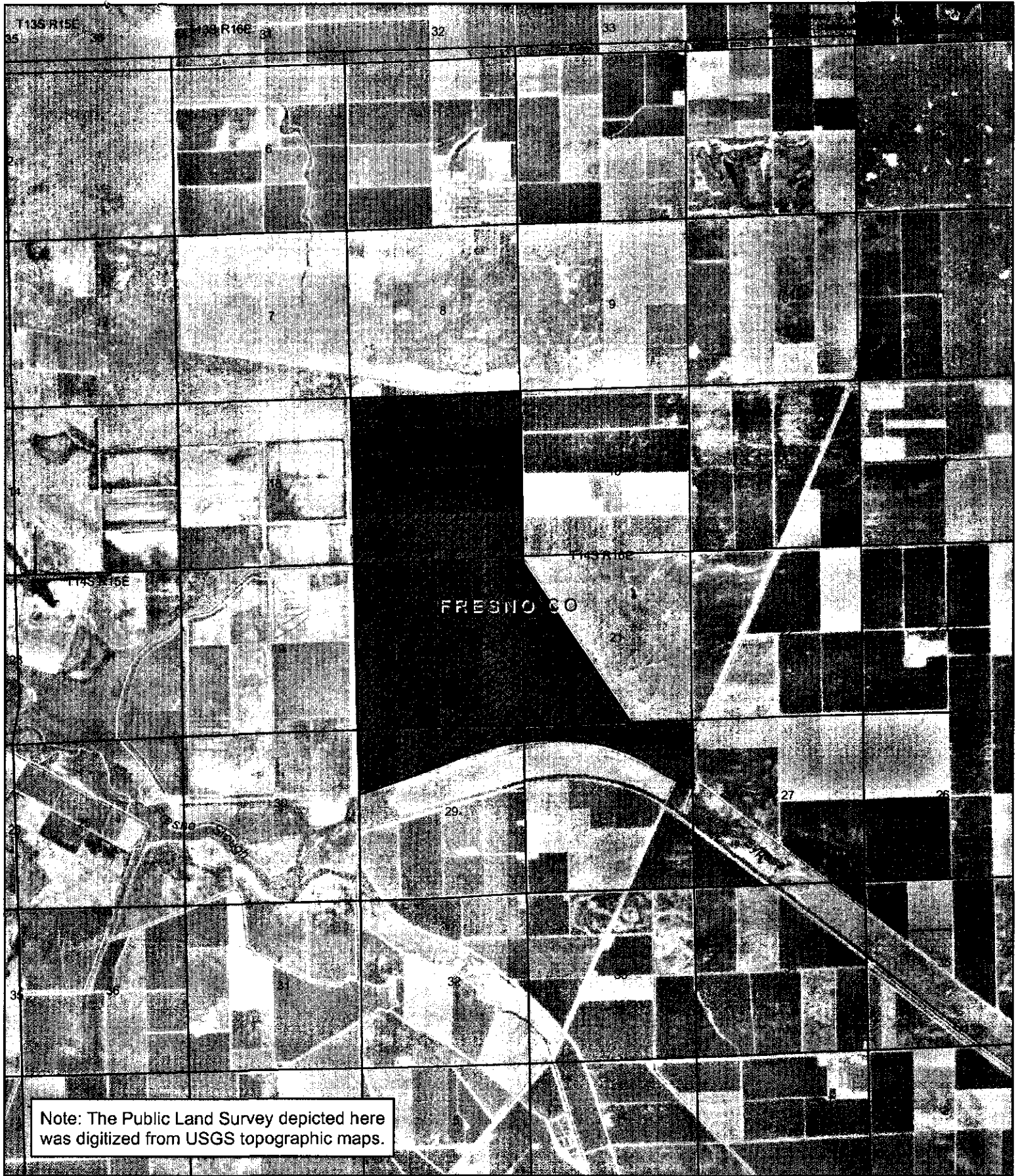
1188 (SEAL)

1189 COEHLO FAMILY TRUST




1190
1191

By: 
Trustee

1192 (H:\pub 440\LTRC\Final Draft LTRC's - Fresno, Tracy\09-23-04 Coehlo Family Trust Final Draft
1193 LTRC with exhibits.doc)



Note: The Public Land Survey depicted here was digitized from USGS topographic maps.

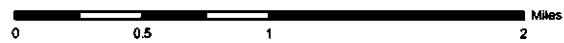
-  Contractor's Service Area
-  District Boundary
-  Riparian Lands

Coelho Family Trust

Contract No. 14-06-200-7859A-LTR1
Exhibit A



10-20-71 (Revised 1-15-71, 2-11-05)



214-202-17
(Supersedes 214-228-3602)

EXHIBIT B
COELHO FAMILY TRUST
Water Rates and Charges

Note: Rates and Charges are 2004 rates. 2005 water rates will be furnished when available.

<u>Cost-of-Service Rates</u>	<u>Irrigation Water</u>	<u>M&I Water 1/</u>
Capital Rates	\$ 11.77	
O&M Rates:		
Water Marketing	7.59	
Storage	5.83	
Conveyance	2/	
Conveyance Pumping	2/	
Deficit Rates:		
Non-Interest Bearing	N/A	
Interest Bearing	3.29	
CFO/PFR Adj. Rate 3/	1.53	
<u>TOTAL COST-OF-SERVICE RATES</u>	<u>30.01</u>	

RRA Full Cost Rates:

Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981	\$ 40.88
Section 205(a)(3) - Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981	\$ 47.95
<u>Charges Under P.L. 102-575 to Restoration Fund 4/</u>	\$ 7.82

1/ To be provided as needed. Contractor does not currently receive M&I water and is not projected to take any in the near future.

2/ costs are direct billed by Operating Non-Federal Entity

3/ Rate represents Chief Financial Officers (CFO) adjustment and Provisions for Replacement (PFR) credit for option 2 cost deferment to be distributed over 5-year period beginning with 2003 water rates.

4/ Restoration fund charges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund charges are on a fiscal year basis (10/1-9/30).

CERTIFICATION OF TRUST
Pursuant to California Probate Code Section 18100.5

The undersigned certifies to the United States Department of the Interior, Bureau of Reclamation, Mid-Pacific Region ("Bureau"), the following:

1. The Coelho Family Trust (the "Trust") is currently in existence.
2. The current trustees (the "Trustee" or "Trustees") of the Trust are Jerald Coelho, John Coelho and Joe Coelho, Jr.
3. The powers of the Trustees of the Trust include:

The power to enter into contracts and other agreements for the benefit of the Trust and perform all acts and execute and deliver all documents necessary for the benefit of the Trust.

The power to borrow money, mortgage, encumber, pledge, convey, grant, assign, or otherwise transfer all or any part of the Trust's real or personal property for the purpose of securing the payment of any of the promissory notes, contracts, instruments and other evidences of indebtedness.

4. Each Trustee has the authority to execute contracts and other agreements for the benefit of the Trust, so long as the Trustees are in agreement regarding a particular contract or other agreement being in the best interest of the Trust.
5. The Trustees believe the long-term renewal contract with the Bureau to be in the best interest of the Trust and authorize the execution of this certification and the long-term renewal contract by Jerald Coelho, Trustee, in furtherance of the timely execution of the long-term renewal contract.
6. The Trust has not been revoked, modified, or amended in any manner, which would cause the representations in this Certification to be incorrect.

This Certification is being executed in accordance with California Probate Code Section 18100.5. The undersigned declare(s) under penalty of perjury under the laws of the State of California that all of the information contained in this Certification is true and correct.

Dated as of: February 25, 2005



Jerald Coelho, Trustee

Notary on Next Page

